

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs June 12, 2009

**WILLIAM C. BROTHERS v. CORRECTIONS CORPORATION OF  
AMERICA, ET AL.**

**Direct Appeal from the Chancery Court for Wayne County  
No. 12224 Stella L. Hargrove, Judge**

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**No. M2008-02249-COA-R3-CV - Filed July 22, 2009**

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This is an appeal from the dismissal of an inmate's civil action for failure to pay court costs in prior lawsuits. Petitioner inmate, appearing pro se, filed this action for declaratory judgment asking the trial court to declare his rights with respect to several criminal statutes. Respondents filed a motion to dismiss based on Tenn. Code Ann. § 41-21-812 asserting that Petitioner had failed to pay court costs in two previous lawsuits. The trial court dismissed the action pursuant to the statute. Finding no error in the trial court's decision, we affirm.

**Tenn. R. App. P. 3. Appeal as of Right; Judgment of the Chancery Court Affirmed**

J. STEVEN STAFFORD, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S. and FRANK G. CLEMENT, Jr., J., joined.

William C. Brothers, Henning, Tennessee, pro se.

James I. Pentecost, Jackson, Tennessee, for the Appellee, Corrections Corporation of America; Robert E. Cooper, Jr., Attorney General and Reporter, and Michael E. Moore, Solicitor General, Jennifer L. Brenner, Assistant Attorney General, Nashville, Tennessee, for Appellee, Tennessee Attorney General Robert E. Cooper Jr.

**OPINION**

Appellant/Petitioner William C. Brothers, an inmate of the Tennessee Department of Correction, filed a Petition for Declaratory Judgment in Wayne County Chancery Court on June 25, 2008. In his petition, Mr. Brothers asked the court to declare his rights and Respondents' obligations concerning the constitutionality and legality of Tenn. Code Ann. §§ 39-11-112, 40-35-501(c), and 41-21-102. Specifically, Mr. Brothers challenged the legality of his prison sentence. Pursuant to Tenn. Code Ann. § 41-21-805, Mr. Brothers filed an affidavit of inability to pay costs and an

affidavit documenting previous lawsuits he had filed in Tennessee. Mr. Brothers also paid the filing fee—whether a full or partial payment is unclear—to the Chancery Court’s Clerk and Master.

The petition named the Tennessee Attorney General Robert E. Cooper, Jr. (“the State”), the Corrections Corporation of America (“CCA”), and CCA Warden Cherry Lindamood as Respondents. Although the record is unclear, CCA was named as a respondent because Mr. Brothers served a portion of his current sentence in a CCA facility. Mr. Brothers is currently incarcerated at West Tennessee State Penitentiary in Lauderdale County, Tennessee.

On August 15, 2008, the State filed a motion to dismiss pursuant to Tenn. Code Ann. § 41-21-812, which would bar petitioner’s lawsuit because of his outstanding court costs. Attached to the motion was the affidavit of Kathy Rupard, Deputy Clerk for the Tennessee Court of Appeals, who stated that Mr. Brothers had \$350.56 in outstanding court costs from two previous cases. Respondents CCA and Ms. Lindamood subsequently filed a motion to join in the State’s motion to dismiss.

Relying on the pleadings, Ms. Rupard’s affidavit, and the record on the whole, the trial court entered an order of dismissal on September 25, 2008. In its order, the trial court found that Mr. Brothers, as an inmate, was barred pursuant to Tenn. Code Ann. § 41-21-812 from filing the petition because of his unpaid court costs from previous lawsuits.

Mr. Brothers filed a timely notice of appeal. In his appellate brief, Mr. Brothers raises several issues, all of which in some way challenge the correctness of the trial court’s ruling on Respondents’ motion to dismiss. As Appellees, CCA and Ms. Lindamood ask that we affirm the trial court’s ruling, or in the alternative, dismiss the claim because they are not proper parties to this action.

### Law and Analysis

The central issue in this appeal is whether the trial court properly found that Mr. Brothers’s lawsuit was barred by Tenn. Code Ann. § 41-21-812. The statute bars lawsuits by inmates who have unpaid court costs from prior cases:

- (a) Except as provided by subsection (b), on notice of assessment of any fees, taxes, costs and expenses under this part, a clerk of a court may not accept for filing another claim by the same inmate until prior fees, taxes, costs and other expenses are paid in full.
- (b) A court may allow an inmate who has not paid any costs or expenses assessed against the inmate to file a claim for injunctive relief seeking to enjoin an act or failure to act that creates a substantial threat of irreparable injury or serious physical harm to the inmate.

Tenn. Code Ann. § 41-21-812. The statute’s bar “applies to validly assessed unpaid costs from all prior cases, not only those found to be malicious or frivolous.” *Sweatt v. Tenn. Dep’t of Corr.*, 99 S.W.3d 112, 115 (Tenn. Ct. App. 2002). This Court has previously held that a “trial court is

authorized to dismiss a lawsuit when it has been erroneously filed by the trial court clerk under section 41-21-812.” *Dotson v. City of Memphis*, No. W2005-01602-COA-R3-CV, 2006 WL 3020122, at \*3 (Tenn. Ct. App. Oct. 25, 2006) (citing *Davis v. Holland*, 31 S.W.3d 574, 578 (Tenn. Ct. App. 2000)).

On appeal, Mr. Brothers apparently concedes that he has not paid the outstanding court costs from the two cases described in Ms. Rupard’s affidavit. He also does not argue that his petition falls under the exception provided in Tenn. Code Ann. § 41-21-812(b). Instead, he presents several arguments purporting to show that Tenn. Code Ann. § 41-21-812 is inapplicable in this case.

Mr. Brothers first argues that Tenn. Code Ann. § 41-21-812 was waived when the Chancery Court accepted his initial filing fee and placed the case on its docket. Payment of the filing fee, however, does not exempt an inmate from the requirements of Tenn. Code Ann. §§ 41-21-801–818. When Mr. Brothers filed his affidavit of inability to pay costs, the statutes governing inmate lawsuits, including Tenn. Code Ann. § 41-21-812, were triggered. *See* Tenn. Code Ann. § 41-21-802; *Sweatt*, 99 S.W.3d at 115. Likewise, the statute was not waived when the lawsuit was placed on the court’s docket. As noted in *Dotson*, the trial court may dismiss an inmate’s lawsuit under Tenn. Code Ann. § 41-21-812 when it has been erroneously filed by the trial court clerk. *Dotson*, 2006 WL 3020122, at \*3. Consequently, Mr. Brothers’s argument that Tenn. Code Ann. § 41-21-812 was waived is without merit.

Mr. Brothers also argues that the statute was waived when the trial court entered an order indicating that some deficiencies in his initial filings had been cured. The court’s order, however, addressed deficiencies in his “in forma pauperis” affidavit; it did not address, or implicitly waive, the applicability of Tenn. Code Ann. § 41-21-812. Accordingly, we find that the trial court did not waive its authority to dismiss Mr. Brothers’s petition under Tenn. Code Ann. § 41-21-812.

Because we find that dismissal was appropriate under Tenn. Code Ann. § 41-21-812, we do not address the remainder of Mr. Brothers’s issues relating to his substantive claim or Respondents Lindamood and CCA’s contention that they were not proper parties to the action.

The decision of the trial court is affirmed. Costs of appeal are assessed to Appellant William C. Brothers and his surety.

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J. STEVEN STAFFORD, J.